

**HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

**WRIT PETITION NO.3729 OF 2013**

**ORDER:**

This writ petition is filed seeking a writ of Mandamus declaring the action of the 1<sup>st</sup> respondent in not paying the subsistence allowance for the period from 01.11.2000 (wrongly mentioned as 01.10.2000) to 31.10.2001 and duty period salary from 01.08.2002 to 29.09.2002 to the petitioner as arbitrary, illegal, unconstitutional and against the settled principles of law and sought a consequential direction to the respondents to pay immediately the subsistence allowance for the period from 01.11.2000 to 31.10.2001 and duty period salary from 01.08.2002 to 29.09.2002 to the petitioner forthwith as instructed by the 2<sup>nd</sup> respondent vide letter dated 07.08.2012.

Heard the counsel for the parties.

It has been contended by the petitioner that initially he was appointed as Secretary in Primary Agricultural Co-operative Society, Gingurthi, which was subsequently merged in Primary Agricultural Co-operative Society, Yelamakanna. The petitioner further contended that while he was discharging his duties with the 1<sup>st</sup> respondent, he was placed under suspension on 01.11.2000 on the allegation of financial irregularities and he was continued under suspension up to 31.10.2001 and thereafter he was reinstated into service and disciplinary proceedings were initiated against him. The petitioner

also submitted that he was dismissed from service vide orders dated 29.09.2002 and thereafter he has preferred appeal to the District Level Committee, Hyderabad District Co-operative Central Bank Limited, Hyderabad, and the appellate authority was pleased to partly allow the appeal vide orders dated 25.10.2008 by setting aside the orders of dismissal and directed that the petitioner be reinstated into service without backwages and the period from the date of removal till the date of reinstatement should not be counted for any other purpose. In pursuance of the orders of the appellate authority, the petitioner was reinstated into service and he has retired from service on attaining the age of superannuation.

The grievance of the petitioner is that when he was placed under suspension i.e., from 01.11.2000 to 31.10.2001, he was not paid the subsistence allowance during the said period.

Counsel for the petitioner submitted that subsistence allowance cannot be denied to an employee and the respondents are not paying subsistence allowance to the petitioner on the ground that the appellate authority has denied backwages and continuity of service for out of employment period. Therefore, counsel submitted that appropriate orders be passed in the writ petition directing the respondents to pay subsistence allowance for the suspension period i.e., from 01.11.2000 to 31.10.2001 within a reasonable period of time.

Standing Counsel appearing for the 1<sup>st</sup> respondent had contended that subsistence allowance, which was to be paid to the petitioner, was adjusted against the dues of the petitioner towards the Society and the petitioner has given an undertaking to the appellate authority expressing his willing to forego all the service benefits, and that on mercy, the case of the petitioner was considered by the appellate authority and the petitioner was reinstated into service without backwages and continuity of service for out of employment period, therefore, there are no merits and the writ petition is liable to be dismissed.

This Court, having considered the rival submissions of the counsel for respective parties, is of the considered view that subsistence allowance is liable to be paid by an employer whenever an employee is placed under suspension and as it is the basic minimum allowance which is paid to an employee for subsistence, the same cannot be denied under any circumstances. Hence, the respondents are directed to pay the subsistence allowance to the petitioner for the suspension period i.e., from 01.11.2000 to 31.10.2001 within a period of eight weeks from the date of receipt of a copy of this order.

Accordingly, the writ petition is allowed to the extent indicated above. No order as to costs.

Pending miscellaneous petitions, if any, shall stand dismissed.

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**ABHINAND KUMAR SHAVILI, J**

18<sup>th</sup> September, 2019

v v